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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections of
The Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

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MM Docket 92-266

PETITION FOR CLARIFICATION OR PARTIAL RECONSIDERATION

TURNER BROADCASTING SYSTEM, INC.

Of Counsel

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PETITION FOR CLARIFICATION OR PARTIAL RECONSIDERATION

Turner Broadcasting System, Inc. ("TBS"), by its attorneys, hereby requests the Federal Communications Commission ("FCC" or "Commission"), pursuant to Section 1.429 of the Commission's rules, to clarify or modify its decision to expressly limit the pass-throughs permitted for the costs of programming obtained from affiliated programmers to the lesser of the annual incremental percentage increase in such costs or the GNP-PI,^{1/} while allowing cable operators to pass-through as "external" increases in programming costs of non-affiliated programmers to the extent such costs exceed inflation.^{2/} We also ask that the Commission make clear that normal corporate transactions, such as paying dividends to all shareholders, should not figure in adjustments to per channel charges. TBS is a diversified company which operates five national program networks, including the Cable News Network, Headline News, Turner Network Television, the Cartoon Network, and TBS



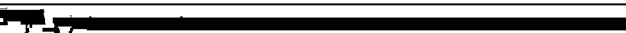
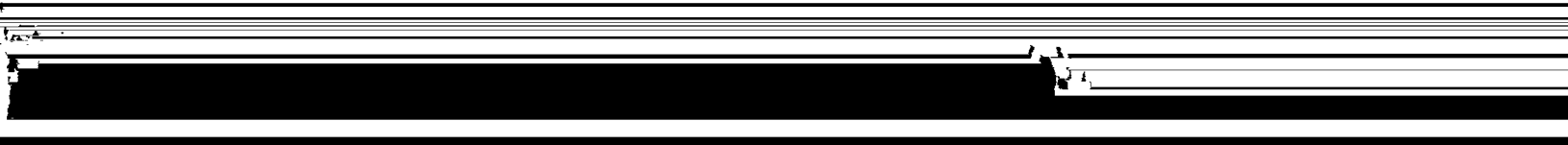
^{1/}47 C.F.R. § 76.922(d)(2)(vi); Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266 at ¶ 252 ("Order").

^{2/}47 C.F.R. § 76.922(d)(2)(i); Order at ¶ 251. Further, adjustments to permitted per channel charges on account of increased programming costs must be reduced to reflect any revenues received by the operator from the programmer. 47 C.F.R. § 76.922(d)(2)(vii).

SuperStation, and is a partial owner and the operator of SportSouth, a regional sports network. TBS has announced plans to launch two additional networks, Turner Classic Movies and CNN-International, the latter of which will provide American viewers' CNN's international feed (of which 4 newscasts each day will be in Spanish).

Introduction


TBS understands that without a limitation on pass-throughs, a cable system could institute an artificial price increase on an affiliated program service, pass through that price



by operators as bona fide shareholders in and lenders to cable programming companies. This section provides that operators must adjust per channel charges "to reflect any revenues received by the operator from the programmer" (emphasis supplied).

I. The Provision Limiting the Pass-Through of Programming Costs for Vertically Integrated Programmers Could Effectively Inhibit Such Programmers From Sustaining Programming Improvements and Developing New Services

The FCC's limitation on pass-throughs of increases in the cost of programming obtained from affiliated programmers could impose substantial hardships on affected programmers. As the FCC itself implicitly acknowledges, limiting the pass-through of increased programming costs will curtail an affiliated programmers' continued ability to



1990-93; the two networks also split the season of the National Football League's Sunday night cable telecasts, with TNT showing 9 games in the first half of the season (plus 3 pre-season) and ESPN showing 9 games in the second half of the season (plus 3 pre-season).^{4/}

Consider the position of TBS cable MSO board members in the next head-to-head

The likely result of discriminating against "vertically integrated networks" is that, over time, they will be unable to compete with other networks for programming. This is particularly true since "non-integrated" networks like USA Network, ESPN and the new Fox cable network -- in addition to bidding freely for "premier" programming such as NFL games and the Olympics, also can and in all likelihood will offer exclusivity to cable systems and "discriminate" against delivery systems competing with cable in ways that "vertically integrated" programmers are no longer allowed to do.

These effects strike at the heart of the 1992 Cable Act. By freezing the ability of TBS and other "affiliated programmers" to improve programming, this measure would undermine the paramount policy of increasing diversity in the multichannel video programming market.^{5/} At the same time, this limitation would contravene another basic goal of the 1992 Cable Act -- to allow the public to benefit from the development of competition among alternate distributors of programming.^{6/}

Congress enacted, and the Commission has implemented, program access provisions which apply only to affiliated programmers, designed to balance the marketplace and to assure multichannel competitors access to valuable programming which the viewing public

^{5/}See 1992 Cable Act, § 2(b)(1) (it is the policy of Congress to promote the availability to the public of a diversity of views and information through cable television and other video distribution media).

^{6/}1992 Cable Act, § 19 (purpose of program access provisions is to increase competition and diversity in the multichannel video programming market).

wants to see at fair, non-discriminatory rates.^{7/} A limitation that hinders affiliated

Conclusion

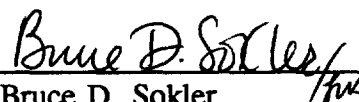
For the foregoing reasons, the Commission should clarify and reconsider its decision to the extent recommended above, thereby permitting affiliated programming services, consistent with the 1992 Cable Act, to continue to thrive and expand the programming choices available to the public.

Respectfully Submitted,

Of Counsel

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CERTIFICATE OF SERVICE

I, Lisa W. Schoenthaler, do hereby certify that copies of the foregoing Petition for Clarification or Partial Reconsideration of Turner Broadcasting System, Inc. were served on the following by hand delivery this 21st day of June, 1993.



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